

1  
2  
3  
4  
5  
6  
7  
8           UNITED STATES DISTRICT COURT  
9           WESTERN DISTRICT OF WASHINGTON  
10          AT TACOMA

11          JOSEY N. BLEAKLEY,  
12                                 Plaintiff,

13                                 v.

14          MICHAEL J. ASTRUE, Commissioner of  
15                                 Social Security,

16                                 Defendant.

17                                 Case No. C08-5517 FDB

18                                 ORDER FOR EAJA FEES, COSTS  
19                                 AND EXPENSES

20          This matter comes before the Court on Plaintiff's motion for an award of attorney's fees and  
21          costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. Plaintiff seeks an award of  
22          \$3,900.58 in attorney fees and \$32.60 in expenses. The Defendant has filed a response stating the  
23          Commissioner has no objection to the requested fees and expenses.

24          The Ninth Circuit has established that the Equal Access to Justice Act (EAJA) applies in  
25          social security cases. Wolverton v. Heckler, 726 F.2d 580 (9<sup>th</sup> Cir. 1984).

26          The EAJA provides in pertinent part:

27          Except as otherwise specifically provided by statute, a court shall award to a  
28          prevailing party other than the United States fees and other expenses ... incurred by  
29          that party in any civil action ... brought by or against the United States in any court

30          ORDER - 1

1 having jurisdiction over than action, unless the court finds that the position of the  
2 United States was substantially justified or that special circumstances make an award  
unjust.

3 A party can be found to prevail when there is a “material alteration of the legal relationships  
4 of the parties,” and the material alteration is “judicially sanctioned.” Carbonell v. INS, 429 F.3rd  
5 894, 898 (9<sup>th</sup> Cir. 2005). A material alteration of the legal relationships of the parties occurs when  
6 one of the parties is required to do something directly benefitting the other party that they would not  
7 otherwise have had to do. Id. at 900. A party need not succeed on every claim in order to prevail.  
8 Rather, a plaintiff prevails if he has succeeded on any significant issue in litigation which achieved  
9 some of the benefit sought in bringing suit. Id., nt. 5. A litigant prevails for purposes of awarding  
10 EAJA fees without a judicial judgement as long as the action has sufficient “judicial imprimatur.”  
11 Id. at 899.

12 The Supreme Court has defined the term “substantially justified” as “justified in substance  
13 or in the main—that is, justified to a degree that could satisfy a reasonable person.” Pierce v.  
14 Underwood, 487 U.S. 552, 565 (1988). To be substantially justified, the government must have “a  
15 reasonable basis both in fact and in law.” Id. at 568. The Ninth Circuit has held that the  
16 government must be substantially justified during both the underlying agency action and the  
17 litigation itself. Al- Harbi v. INS, 284 F.3d 1080, 1084-85 (9<sup>th</sup> Cir. 2002). Thus, the government  
18 must meet this threshold twice - once with regard to the underlying agency action, and then with  
19 regard to its litigation position in the proceedings arising from that action. See Kali v. Bowen, 854  
20 F.2d 329, 332 (9<sup>th</sup> Cir. 1988).

21 The party seeking fees must submit “an itemized statement ... stating the actual time  
22 expended and the rate at which fees and other expenses were computed.” 28 U.S.C. §  
23 2412(d)(1)(B). The appropriate number of hours includes all time “reasonably expended in pursuit  
24 of the ultimate result achieved.” Hensley v. Eckerhart, 461 U.S. 424, 431 (1983). However,  
25 “excessive, redundant, or otherwise unnecessary” hours should be excluded from the fee award. Id.

1 at 434. Although the fee applicant bears the burden of documenting the appropriate hours  
2 expended, "the party opposing the fee application has a burden of rebuttal that requires submission  
3 of evidence to the district court challenging the accuracy and reasonableness of the hours charged or  
4 the facts asserted by the prevailing party in its submitted affidavits." Gates v. Deukmejian, 987  
5 F.2d 1392, 1397-98 (9<sup>th</sup> Cir. 1993).

6 By Order dated February 10, 2009 this action was reversed and remanded to the Social  
7 Security Administration for further administrative proceedings. The Order is fully favorable to  
8 Plaintiff and materially advances his position. The Defendant's position was not substantially  
9 justified as defined by the EAJA, and that there are no special circumstances that would make an  
10 award in this case unjust. Counsel for Plaintiff has filed his affidavit seeking attorney fees totaling  
11 \$3,900.58 based upon an expenditure of 22.95 hours of attorney's time and \$32.60 in expenses to  
12 maintain this action. The government has filed a response stating it has no objection to this  
13 request.. The Court finds the requested fees and expenses to resolve this matter to be reasonable.  
14 Plaintiff has provided sufficient itemized statements of how the time was distributed.

15 ACCORDINGLY,

16 IT IS ORDERED:

17 Plaintiff's motion for an award of costs and attorney's fees [Dkt # 19] is **GRANTED**.  
18 Expenses in the amount of \$32.60 and attorney's fees in the amount of \$3,900.58 are awarded to  
19 Plaintiff's attorney Jon Erik Mueller.

20  
21 DATED this 1<sup>st</sup> day of June, 2009.

22  
23  
24   
FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE

25  
26 ORDER - 3